In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-815

RAMON R. APPAWORA,

Appellant,

v.

MYRON BROUGH,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant appeals from a decision of the Utah Supreme Court rendered August 17, 1976 (Petition for Rehearing denied September 20, 1976), affirming an Order of the Fourth Judicial District Court of Uintah County, State of Utah, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The decision of the Supreme Court of the State of Utah from which this appeal is taken is reported in 553 P.2d 934 (1976). A copy of the Court's opinion is appended hereto as Appendix A. The Order of the Supreme Court of the State of Utah denying a Petition for Rehearing is not reported and is appended hereto as Appendix B. The Order of the Fourth Judicial District Court of Uintah County, State of Utah, denying Appellant's Motion to Set Aside Default and Default Judgment and to Dismiss, from which the appeal to the Utah Supreme Court was taken, is not reported and is appended hereto as Appendix C.

JURISDICTION

This action arose in a county district court in the State of Utah. A default money judgment was entered against appellant Appawora, an enrolled member of the Ute Indian Tribe, who thereafter made timely motions to set aside the judgment and to dismiss the action on grounds that the court lacked jurisdiction over both appellant and the subject matter of the action. The Order denying these motions was appealed to the Utah Supreme Court which affirmed the Order in an opinion filed August 17, 1976. The Utah Supreme Court denied a Petition for Rehearing on September 20, 1976. The Notice of Appeal to this court was filed on October 13, 1976, with the Fourth Judicial District Court of Uintah County, State of Utah. (Appendix K).

The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by 28 U.S.C. §1257(1) (62 Stat. 929). The following decisions sustain the jurisdiction of the Supreme Court to review the Utah judgment on direct appeal in this case: *Wissner v. Wissner*, 338 U.S. 655 (1950), and *Flournoy v. Wiener*, 321 U.S. 253 (1944).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Commerce Clause of the Constitution of the United States (Article I, Section 8, Clause 3), and the Due Process Clause of the fourteenth amendment are set forth in Appendix D. Sections 1321 through 1326 (82 Stat. 78-80), of Title 25 U.S.C. are set forth in Appendix E. Section 667 (68 Stat. 868), of Title 25 U.S.C. is set forth in Appendix F. The Act of Congress of March 11, 1948 (62 Stat. 72), is set forth in Appendix G. Sections 9 through 18 of Title 63, Chapter 36, Utah Code Annotated, 1953, are set forth in Appendix H. Although not asserted to have been invalidated, the Act of Congress of May 27, 1902 (32 Stat. 245, 264), and the Presidential Proclamation of July 14, 1905 (34 Stat. 3119), relied on by the Utah Supreme Court below are set forth in Appendix I and Appendix J respectively.

QUESTIONS PRESENTED

1. Where appellant has asserted rights under 25

U.S.C. §§1321-1326, are these statutes in contravention of the Due Process Clause of the United States Constitution?

2. Where the Ute Indian Tribe of the Uintah and Ouray Reservation has never, by tribal consent election or otherwise, accepted Utah State civil or criminal jurisdiction as required by 25 U.S.C. §1326, do the courts of the State of Utah have jurisdiction to entertain a civil action brought by a non-Indian against an enrolled member of the Ute Indian Tribe arising out of an accident occurring within the exterior boundaries of the Tribe's reservation?

3. Where the Utah Supreme Court has declared that the Congressionally recognized Ute Indian Tribe no longer exists and that the members of the Tribe no longer have an interest in their reservation lands or immunities resulting therefrom, has it improperly invalidated the numerous Acts of Congress and the opinion of this Court which recognize the continued existence of the Ute Indian Tribe and its Uintah and Ouray Reservation?

4. Where appellant has asserted his right under 25 U.S.C. §§1321-1326, and Sections 63-36-9 through 18, Utah Code Annotated, 1953, to have this action heard in tribal court, does the decision of the Utah Supreme Court deny him his right to due process of law?

STATEMENT

This action arose in a county district court in the

State of Utah. Plaintiff-appellee, Myron Brough, a non-Indian, filed a civil action against defendant-appellant, Ramon R. Appawora, an enrolled member of the federally-recognized Ute Indian Tribe of the Uintah and Ouray Reservation, to recover damages allaged to have resulted from an automobile accident occurring on a road within the exterior boundaries of the Indian reservation on which appellant resides. Appawora was served with process by a county deputy sheriff within the exterior boundaries of that reservation but failed to respond thereto. A default judgment in the amount of $28,833.00 was entered against the appellant Indian on September 9, 1975. Thereafter, Appawora obtained counsel and made a timely motion to the county district court to set aside the default judgment and to dismiss the action on the grounds that the county district court lacked jurisdiction over both himself and the subject matter of the action, and that the judgment entered was, therefore, void.

Affidavits submitted to the county district court with this motion established the following facts, which were never contested before that court:

(1) That Appawora is an enrolled member of the Ute Indian Tribe of the Uintah and Ouray Reservation, and that his residence is at Randlett, Utah. (Record, p. 18, 19).

(2) That Randlett, Utah, the place of Appawora's residence and the place where the state process was served on him, is located entirely within the exterior

boundaries of the Uintah and Ouray Reservation. (Record, p. 3, 20).

(3) That the location where the accident in question occurred, "2 miles south of Fort Duchesne, Utah" is also located entirely within the exterior boundaries of the Uintah and Ouray Reservation. (Record, p. 20, 22).

(4) That the Ute Indian Tribe of the Uintah and Ouray Reservation is a federally-recognized Indian tribe exercising powers of self-government within the exterior boundaries of the Uintah and Ouray Reservation. (Record, p. 20).

(5) That the Ute Indian Tribe has a comprehensive Law and Order Code which establishes a Tribal Court having jurisdiction over all civil cases involving enrolled members of the Tribe. (Record, p. 20).

(6) That the Ute Indian Tribe has never accepted Utah State jurisdiction over itself or its members pursuant to 25 U.S.C. §§1322(a) and 1326 (Appendix E) or Sections 63-36-9 through 18, Utah Code Annotated, 1953, (Appendix H), or otherwise granted, ceded or surrendered its jurisdiction to the State of Utah. (Record, p. 21).[1]

Appawora's motion to the county district court was

[1] The facts enumerated in (2) through (6) above were established by affidavit of the Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, U.S. Department of the Interior, located at Fort Duchesne, Utah.

accompanied, in addition to the affidavits referred to above, by a memorandum raising and developing the following points (Record, pp. 8-17):

(1) Lack of subject matter jurisdiction, over a reservation Indian for a cause of action arising on his reservation, citing numerous authorities including 25 U.S.C. §§1321-1326, *Williams v. Lee*, 358 U.S. 217 (1959), *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973), and *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971).

(2) Lack of jurisdiction over the person — ineffectiveness of state process on an Indian on his reservation.

The Order of the county district court dated December 12, 1975, (Appendix C) recites that the motion decided was made on the grounds of lack of jurisdiction over both the defendant and the subject matter, and denies the motion.

Appellant Appawora perfected a timely appeal in the Utah Supreme Court from the Order of the county district court refusing to set aside the judgment and to dismiss the action. Appawora there presented and developed the issue of lack of personal and subject matter jurisdiction over a reservation Indian to the Utah Supreme Court by both his briefs and arguments. The Supreme Court affirmed the Order in an opinion filed August 17, 1976, from which two members of the five-member Court dissented (Appendix A).

Appawora thereafter filed a timely Petition for Rehearing with the Utah Supreme Court which was denied without comment (Appendix B). Included with the Petition for Rehearing was a brief pointing out to the Utah Supreme Court the numerous Congressional statutes and other authorities which support the conclusions that both the Ute Tribe and its reservation continue to exist, as well as the decision of this Court which had expressly upheld the requirement for a tribal consent election as a precondition to state jurisdiction under 25 U.S.C. §§1322(a) and 1326. See ***Kennerly v. District Court***, 400 U.S. 423 (1971).

A Notice of Appeal to this Court was filed in the Fourth Judicial District Court for Uintah County, Utah, on October 13, 1976.

The State of Utah had, in 1971, enacted legislation (Sections 63-36-9 to 63-36-17, Utah Code Annotated, 1953; appended hereto as Appendix H), to implement Subchapter III of the so-called "Indian Civil Rights Act" which provided for state assumption of jurisdiction over criminal and civil actions on Indian reservations. See 25 U.S.C. §§1321 to 1326 (Appendix E).

The record before the Utah Supreme Court contained uncontradicted evidence that the Ute Indian Tribe of the Uintah and Ouray Reservation, of which Appawora is an enrolled member, is a federally-recognized Indian tribe and that it has *never*, by tribal consent election or otherwise, accepted Utah State civil or criminal jurisdiction as required by 25 U.S.C. §1326

(Record, pp. 20-21). The issues of the existence of the Ute Indian Tribe and the continuing existence of the Uintah and Ouray Reservation were not raised in the trial court.

The Utah Supreme Court's majority opinion, in which three members of that Court concurred and from which two members dissented, affirmed the Order of the county district court in refusing to dismiss the action for lack of both personal and subject matter jurisdiction (Appendix A). The majority opinion disposes of the case on the following bases:

1. Regarding appellant's assertion of his right to have the matter heard in tribal court in confromity with rights accorded by 25 U.S.C. §1322(a) and 25 U.S.C. §1326, the Utah Supreme Court stated:

> To declare the law to be as claimed by the appellant would be to abandon all forms of due process and permit an enrolled Indian to commit crimes or torts at will and be immune from any accountability to the law of the land. Any statute or court decision which would prevent an enrolled Indian from being tried under the law of the land for a tort or crime committed by that Indian would be in contravention of the due process clause of the Constitution.
>
> To permit an Indian . . . to claim the sanctuary of the tribal method of procedure is unthinkable.

2. With reference to the jurisdiction of the courts of Utah to entertain a civil action against an enrolled member of a federally-recognized Indian tribe based upon events occurring within the exterior boundaries

of the Uintah and Ouray Reservation, the Court ruled:

> Some 25 years ago, the Ute Indians got a judgment against the United States government for the money which it had received from the sale of reservation land lying in the State of Colorado. . . . By this judgment, and the satisfaction thereof, the Indians lost all rights which the or their ancestors ever had in or to the land not theretofore allocated [sic] to them. No longer can an Indian migrant carry about him a protecting mantle which makes him immune to the law of the land so long as he does not stray beyond the snowcapped mountains to the north and south of the Duchesne drainage basin. (Appendix A).

3. With reference to the continuing existence or non-existence of the Ute Indian Tribe and the Uintah and Ouray Reservation and the question of privileges and immunities of enrolled members of the Tribe, the Utah Court ruled:

> The Ute nation of the long ago treaty, no longer exists, and the descendants of the inhabitants of that nation are now citizens of the United States. . . . For a long time, Indians have claimed that they were not treated as citizens of this country. Now that they are citizens of the United States, some of them are unwilling to accept the responsibilities and duties which go with the privilege of citizenship. (Appendix A).

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are of utmost importance to appellant, to all members of the Ute Tribe, to all other similarly-situated Indians, and to

the United States. The opinion of the Utah Supreme Court ignores or nullifies rights accorded tribal members by Federal Statute, disenfranchises the members of the Ute Tribe, and abolishes their Congressionally-recognized reservation. These questions are substantial and merit plenary consideration. The reasons for requesting such consideration areas follows:

I. THE INVALIDITY OF 25 U.S.C. §§1322(a) AND 1326.

The Utah Supreme Court was confronted with both federal (25 U.S.C. §§1322(a) and 1326) (Appendix E) and Utah State statutes (§63-36-10, Utah Code Annotated, 1953) (Appendix H) which made the obtaining of tribal consent through a special tribal election a necessary condition precedent to the exercise by Utah State courts of civil jurisdiction over a reservation Indian for a cause of action arising on that Indian's reservation. It is undisputed that such a special election was not held and that the Ute Indian Tribe never granted, ceded or surrendered jurisdiction to the State of Utah as required by these statutes.

Appawora presented to the Utah Court the holding of this Court in the case of *Kennerly v. District Court*, 400 U.S. 423 (1971), which established the mandatory nature of the special election requirement, even in a situation in which the governing body of a tribe attempts to cede such jurisdiction to a state, but fails to follow

the statutory requirements.[2]

Also before the Utah Court was the holding of this Court in the case of *Williams v. Lee*, 358 U.S. 217 (1959), which denied to the courts of the State of Arizona subject matter jurisdiction over a civil cause of action arising on the Navajo reservation in Arizona in a situation also involving a non-Indian plaintiff and an Indian defendant.[3]

Notwithstanding these authorities, the Utah Supreme Court majority opinion's response was as follows:

> Any statute or court decision which would prevent an enrolled Indian from being tried under the law of the land for a tort or crime committed by that Indian would be in contravention of the due process clause of the Constitution. (Appendix A), 553 P.2d 934, 936.

Such a holding, declaring the invalidity of federal statutes and disregarding the opinions of this Court, presents a case both within the express language of 28 U.S.C. §1257(1) and substantial in its impact so as to require plenary consideration. The Utah Court's majority opinion implies that Utah State law is the only

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[2] This holding has been re-emphasized in this Court's recent per curiam decision in the case of **Fisher v. District Court**, 44 U.S.L. Week 3490 (U.S. Mar. 1, 1976).

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[3] The evidence before the Utah Court, as in **Williams**, was that the Ute Indian Tribe had a functioning Tribal Court empowered to hear all civil actions involving enrolled members of the Ute Tribe. This Court has reaffirmed the holding of **Williams** that "the authority of tribal courts could extend over non-Indians insofar as concerned their transactions on a reservation with Indians." **United States v. Mazurie**, 419 U.S. 544, 558 (1975).

"law of the land." This conclusion by the Utah Supreme Court presents a wholly appropriate situation for this Court to assume jurisdiction and reaffirm both the enactments of Congress, which this Court has previously upheld, and the integrity of its own prior decisions.

II. THE JURISDICTION OF THE UTAH COURTS.

A. FEDERAL AUTHORITY AND TRIBAL SOVEREIGNTY PREEMPT THE EXERCISE OF STATE JURISDICTION.

The appropriateness of looking to Federal law in any case involving an Indian on his reservation stems from the express reservation of authority by the U.S. Constitution to the Congress, "To regulate commerce with foreign nations, and among the several states, and *with the Indian tribes.*" Article I, Section 8, Clause 3, U.S. Constitution. See *e.g.*, *Williams v. Lee*, 358 U.S. 217, 219, n.4 (1959), and *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 172, n.7 (1973).

This Court has held that:

> It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property. The guardianship arises from their condition of tutelage or dependency; and it rests with Congress to determine when the relationship shall cease; the mere grant of rights of citizenship not being sufficient to terminate it. *Winton v. Amos*, 255 U.S. 373, 391-2 (1921).

It is equally well established that:

> When Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress. *United States v. Celestine*, 215 U.S. 278, 285 (1909).

See also *Seymour v. Superintendent*, 368 U.S. 351 (1962), *Mattz v. Arnett*, 412 U.S. 481 (1973), and *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

The leading case denying state courts jurisdiction over reservation Indians for a civil cause of action arising in the Indian's reservation is *William v. Lee*, 358 U.S. 217 (1959). There this Court reversed a decision of the Supreme Court of Arizona which had held that Arizona courts had jurisdiction of a civil suit against reservation Indians for goods sold to them by a non-Indian operating a store on the reservation, stating:

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. ***The cases of this court have consistently guarded the authority of Indian governments over their reservations. 358 U.S. at 223.

The doctrine of *Williams v. Lee* in a situation such as this case presents has been strengthened since it was pronounced in 1959. This Court has consistently held that the sole means by which a state can acquire civil

jurisdiction over reservation Indians for cause of action arising on the reservation is by following the requirements of 25 U.S.C. §1321, *et seq*. As reaffirmed in *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 180 (1973):

> Appellee cites us to no cases holding that this legislation may be ignored simply because tribal self government has not been infringed. On the contrary, this court expressly rejected such a position only two years ago. [*Kennerly v. District Court*, 440 U.S. 423 (1971), see infra.] [4]

The right enunciated in *Williams v. Lee* is a right which must be viewed from the perspective of the individual Indian himself, rather than from the tribal point of view. The right is that of the individual Indian to have the tribal court of his reservation hear and decide cases against the Indian arising on the reservation. The Navajo Tribe, as a Tribe, had no more interest in the debt which was the subject matter of *Williams*, than does the Ute Tribe in the auto accident which is the precipitating event herein. This Court in *Williams v. Lee* denied jurisdiction to the Arizona state courts because they did not have jurisdiction, whether a distinct tribal interest in the transaction was involved or not.

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[4] The footnote following this statement states:
Indeed, the position was expressly rejected in Williams, itself, upon which appellee so heavily relies. Williams held that **"absent governing Acts of Congress**, the question has always been whether the state action, infringed on the right of reservation Indians to make their own laws and be ruled by them." [Citation] 411 U.S. at 180, n. 21,
[Emphasis the Court's].

It is submitted that the plenary power of Congress exercised in its trustee relationship to American Indians has so pervaded the field of Indian affairs so as to completely preempt the state from encroachment into reservation matters, except upon such condition as the Congress itself may dictate.

B. THE COURTS OF THE STATE OF UTAH CAN EXERCISE NO JURISDICTION HEREIN WITHOUT TRIBAL CONSENT.

In 1968 the Congress of the United States authorized the states to assume jurisdiction over Indian country[5] provided both the state and the tribe consent to such jurisdiction. (See 25 U.S.C. §1322(a)) (Appendix E).

In response to this federal law, the Utah State Legislature in 1971 enacted Sections 63-36-9 through 63-36-17, U.C.A., 1953 (Appendix H).[6]

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[5] The term "Indian Country" is used in both the federal and state statutes and is defined, in part, by 18 U.S.C. §1151 as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation. . . ." This Court has held that this definition applies to questions of both civil and criminal jurisdiction. See **DeCoteau v. District County Court**, 420 U.S. 425, 427, n. 2 (1975). The Utah Legislature, in 1973, defined the term "Indian reservation" by the use of similar language. See Section 63-36-18, U.C.A., 1953 (Appendix H).

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[6] Specifically, Section 63-36-9, U.C.A., 1953, provides:

> The state of Utah hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, country and lands or any portion thereof within this state in accordance with the consent of the United States given by the act of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), to the extent authorized by the act and this act.

The federal act and Utah implementing legislation establish necessary conditions precedent before the assumption of jurisdiction will be effective. Both 25 U.S.C. §1326 and Section 63-36-10, U.C.A., 1953, require that a tribal consent election be held before state jurisdiction may be applied to the reservation and its Indian residents. 25 U.S.C. §1326 sets forth the requirement as follows:

> State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. . . . (Appendix E).

Section 63-36-10, U.C.A., 1953, in conformity with the federal statute, provides as follows:

> State jurisdiction acquired or retroceded pursuant to this act with respect to criminal offenses or civil causes of action shall be applicable in Indian country only where the enrolled Indians residing within the affected area of such Indian country accept state jurisdiction or request its retrocession by a majority vote of the adult Indians voting at a special election held for that purpose. . . . (Appendix H).

As indicated in the Statement of Facts, the uncontradicted evidence before the county district court was:

> That the Ute Indian Tribe of the Uintah and Oura Reservation, has never accepted Utah State Jurisdiction over itself or its members pursuant to

> 25 U.S.C. Sections 1321-1326 or Section 63-36-9 through 18, U.C.A., 1953, or otherwise granted, ceded or surrendered its jurisdiction to the State of Utah. (Record, p. 21)[7]

Absent such acceptance of jurisdiction, the district court could neither assume nor exercise jurisdiction over defendant, an enrolled reservation Indian, for a cause of action arising on his reservation.

The mandatory nature of the requirement of a tribal election as a precondition to state assumption of jurisdiction over Indians on their reservation is explicitly set forth in *Kennerly v. District Court of Montana*, 440 U.S. 423 (1971). There a suit was commenced in a Montana state court against members of the Blackfeet Tribe to recover a debt arising from the purchase of groceries in a store in Browning, Montana, a town incorporated under Montana law, but located within the exterior boundaries of the Blackfeet Reservation. In 1967, the Blackfeet Tribal Council had passed a resolution apparently giving the Montana state courts concurrent jurisdiction over suits against members of the Tribe. The Montana trial and supreme courts upheld jurisdiction over the Indians.

This Court vacated the judgment solely because

[7] Section 63-36-13, U.C.A., 1953, further deals with the subject of "civil jurisdiction" and states as follows:

> The state of Utah shall assume jurisdiction over civil causes of action as set forth in this act, between Indians or to which Indians are parties in the lands described in each tribal resolution sixty days after issuance of the governor's proclamation to the same extent it has jurisdiction over civil causes of action as elsewhere within the state. . . . [Emphasis added] (Appendix H).

the procedures specified in 25 U.S.C. §1326 had not been followed and held that, notwithstanding the consent of the Tribal Council, the State of Montana could not assume or exercise its court jurisdiction over the Blackfeet. In the present case, not only is a tribal consent election absent, but there has never been any attempt by the Ute Tribal Business Committee to cede or grant jurisdiction to the State of Utah.

III. THE INVALIDITY OF VARIOUS ACTS OF CONGRESS RECOGNIZING THE CONTINUING EXISTENCE OF THE UINTAH AND OURAY INDIAN RESERVATION AND THE UTE INDIAN TRIBE.

The complicated question of the status of the Ute Tribe's Uintah and Ouray Reservation was neither briefed nor argued to the Utah Supreme Court before its opinion was issued.[8] Despite this lack of an adversary presentation of these issues, that Court disposed of the case by ruling that neither the Ute Tribe nor the Uintah and Ouray Reservation now exists and that, as a result, appellant cannot assert any special status as an enrolled reservation Indian.

The Utah Supreme Court's majority opinion demonstrates at best only a negligible review of the relevant statutes and legislative history upon which these issues

[8] Appawora did brief these questions in his Brief accompanying the Petition for Rehearing to the Utah Supreme Court.

are grounded. The opinion cites but two of several dozen relevant statutory references to find a restoration of the Uintah and Ouray Reservation to "the public domain."[9]

The Utah Court reasons that the Ute Tribe's Uintah and Ouray Reservation in Utah has been terminated as a result of a claims judgment paid to certain Ute Indians for the loss of a reservation once occupied in the State of Colorado.[10] Thereafter the Court concludes, on the basis of the evidence just recited, that the Ute Indian Tribe's reservation was terminated and that such a conclusion is fully supported by this Court's decision in the case of *DeCoteau v. District Court*, 420 U.S. 425 (1975).

Such a conclusion completely ignores the principles of statutory construction for reservation status cases set

[9] The first of such references (Appendix A, n.1), is to a Presidential Proclamation of July 14, 1905 (34 Stat. 3119; appended hereto as Appendix I), which opened the Uintah portion of the reservation to homesteading under an Act of Congress, not even cited, and which expressly did not, contrary to the Utah Court's statement, place unallotted lands "back on the public domain."

The second statutory reference (Appendix A, n. 2), is to an Act of Congress dated May 27, 1902 (32 Stat. at 264; appended hereto as Appendix J), which the Utah Court indicates made an appropriation "to pay for the land thus transferred." An examination of this Act reveals that the only appropriation it makes to the Ute Indians is to pay two bands of Ute Indians for lands used for purposes of making allotments to a third band of Ute Indians settled on their reservation. (All three of these bands now comprise the Ute Indian Tribe under an Indian Reorganization Act (25 U.S.C. §476; 48 Stat. 987) Constitution and Bylaws.)

[10] See Appendix A, the paragraph containing n. 3.

forth in the *DeCoteau* opinion and invalidates, *sub silentio*, the various acts of Congress expressly recognizing the Ute Tribe's Reservation subsequent to the statutory references made in the opinion. The *DeCoteau* opinion summarizes these principles for such cases as follows:

> This Court does not lightly conclude that an Indian reservation has been terminated. "[W]hen Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress." . . . The congressional intent must be clear, to overcome "the general rule that '[d]oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith.'" . . . Accordingly, the Court requires that the "congressional determination to terminate . . . be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." . . . In particular, we have stressed that reservation status may survive the mere opening of a reservation to settlement, even when the monevs paid for the land by the settlers are placed in trust by the Government for the Indians' benefit. 420 U.S. 425, 444.

The Utah Supreme Court, in attempting to take judicial notice of reservation status, has failed to discover, or refused to consider, the bulk of the Congressional enactments,[11] both prior to and subsequent to the

[11] See e.g.:
Treaty of December 30, 1849 (9 Stat. 984); Act of May 5, 1864 (13 Stat. 63); Act of February 23, 1865 (13 Stat. 432); Treaty of March 2, 1868 (15 Stat. 619); Act of June 15, 1880 (21 Stat. 199); Executive Order of January 5, 1882 (I Kapper 901);

(Continued on next page)

time of the events cited in the Court's opinion, which evidence compels the conclusion that the Ute Indian Tribe and its Uintah and Ouray Reservation continue to exist to this day. Illustrative of these authorities are the following:

Forty-three years after the events recited by the Utah Supreme Court's majority opinion, Congress, on March 11, 1948, passed an Act adding a substantial area to the Uintah and Ouray Reservation. This Act (62 Stat. 72; Appendix G), commences with the following language:

> Be it enacted . . . , That the exterior boundary of the Uintah and Ouray Reservation in Grand and Uintah Counties, in the State of Utah, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation, is hereby extended to include the following area: [legal description follows.]

This Act does not establish the reservation; it extends the existing exterior reservation boundaries, and it does

(Continued from page 21)

Act of August 15, 1894 (28 Stat. 286, 337); Proclamation of February 22, 1897 (29 Stat. 895); Act of June 7, 1897 (30 Stat. 62, 87); Act of June 4, 1898 (30 State. 429); Act of March 1, 1899 (30 Stat. 924, 940-41); Act of May 27, 1902 (32 Stat. 245, 263); Joint Resolution of June 19, 1902 (32 Stat. 744); Act of March 3, 1903 (32 Stat. 982, 997); Act of April 21, 1904 (33 Stat. 189, 207-08); Act of March 3, 1905 (33 Stat. 1048, 1069); Proclamation of July 14, 1905 (34 Stat. 3116); Proclamation of July 14, 1905 (34 Stat. 3119); Proclamation of August 2, 1905 (34 Stat. 3140); Act of April 30, 1908 (35 Stat. 70, 95); Executive Order of May 17, 1921; Secretarial Order of August 25, 1945 (10 Fed. Reg. 12409); Act of March 11, 1948 (62 Stat. 72); Act of March 16, 1950 (64 Stat. 19); Act of July 14, 1956 (70 Stat. 546); Act of August 2, 1956 (70 Stat. 936); Act of September 18, 1970 (84 Stat. 843).

so for the benefit of the existing Ute Indian Tribe of the Uintah and Ouray Reservation.

On August 27, 1954, Congress passed an Act distributing a portion of the Ute Tribe's assets to the so-called "mixed blood" members of the Tribe, and thereafter terminated federal supervision over the property so distributed (68 Stat. 868; 25 U.S.C. §677 *et seq;* Appendix F). The property not so distributed remained with the Ute Indian Tribe, under federal supervision, for the benefit of the Tribe and the non-terminated "full-blood" members of the Tribe.

In subsequent litigation arising out of the handling of the "mixed-blood" members' assets, this Court observed:

> There is, and can be, no dispute that the United States holds title to the land, including the mineral interest, constituting the Uintah and Ouray Reservation. *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 141 (1972).[12]

Since both Congress and this Court have expressly recognized the continuing existence of the Ute Tribe and its Uintah and Ouray Reservation subsequent to the events which the Utah Supreme Court majority finds resulted in a termination of those entities, substantial questions exist not only regarding the validity of the Utah Court's interpretation of federal law, but concerning the proper forum and means by which that federal law is to be construed. A comparison of the

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[12] This opinion also contains numerous references to the Ute Tribe itself.

Utah Court's opinion herein with the meticulous examination of the legislative record which this Court has required in prior reservation termination cases (see e.g., this Court's *DeCoteau* opinions), indicates that these substantial issues of federal law have not been fully considered by the Utah Supreme Court.

IV. APPAWORA'S RIGHT TO DUE PROCESS OF LAW.

The Utah Court's opinion itself denies Appawora his right to due process of law in at least two ways: (1) The opinion denies him the right to have this action heard in tribal court, the only forum having jurisdiction under both state and federal law; and (2) It further denies him this right without ever having given him notice or an opportunity to be heard on the issue upon which the majority opinion is based.

The case of *Williams v. Lee*, 358 U.S. 217 (1959), denied to the courts of the State of Arizona any civil jurisdiction over a reservation Indian for a cause of action arising on the Indian's reservation. Like the instant case, that case involved a non-Indian plaintiff. This Court recognized the defendant Indian's right to have the action heard in his tribal court and there stated:

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the *right of*

> *the Indians to govern themselves.* . . . Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since. If this power is to be taken away from them, it is for Congress to do it. [Citation] 358 U.S. at 223. (Emphasis added.)

As indicated in II A above, this Court has previously held that this right in individual Indians is not dependent upon a showing of an infringement of tribal self-government. See *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 180 (1973).

Not only has the Utah Supreme Court taken this right away, it has taken it away by deciding this case on an issue not argued, briefed or raised by the pleadings or in the county court below. Appawora's due process rights have been violated both because of the arbitrary nature of the decision and because he was given neither notice of the surprise nature of the decision nor an opportunity to be heard thereon.

CONCLUSION

The decision of the Utah Supreme Court has altered the jurisdictional status quo on the Uintah and Ouray Reservation. As a result, tribal members are now subjected to the jurisdiction of the courts of the State of Utah. The implications of such a decision cannot be minimized. Substantial questions are presented,

jurisdiction exists and the resolution of these questions requires plenary consideration by this Court.

Respectfully Submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF UTAH

Myron Brough,
Plaintiff and Respondent,

v.

Ramon R. Appawora,
Defendant and Appellant.

No. 14434

FILED
August 17, 1976

Allan E. Mecham, Clerk

ELLETT, Justice:

The defendant appeals from a decision of the District Court of Uintah County declining to set aside a default judgment entered on behalf of the plaintiff on September 9, 1975. The plaintiff, a non-Indian, obtained a judgment by default for the sum of $28,800 general and special damages, together with costs of court. On or about October 22, 1975, defendant, an enrolled member of the Ute Indian Tribe, appeared specially and moved the court to set aside the default

judgment and dismiss the action on the basis that the court lacked jurisdiction over the defendant and the subject matter. The court denied the motion and the defendant is here seeking a reversal.

The automobile accident out of which this action arose occurred on November 12, 1974, on a county road in Uintah County approximately two miles south of Fort Duchesne, Utah. The defendant claims that the reservation on which he lives encompasses all the land within the "drainage of the Duchesne River from the snowcapped mountains on the north to the snowcapped mountains on the south." This area of land includes numerous cities and towns and thousands of acres of land owned and occupied by non-Indians.

The sole question presented on this appeal is whether or not the district courts of the State of Utah have jurisdiction over enrolled members of the Ute Indian tribe within the area drained by the Duchesne River and its tributaries.

The government of the United States formerly warred with the various Indian tribes and as a means of preventing further bloodshed, entered into treaties of peace with the ancestors of this defendant whereby certain lands were set apart for their use. With the advance of civilization and the increase in population, it was considered advisable for certain areas of the land to be sold. The Indians were granted specific lands chosen by themselves and the remaining land was sold to the government with a proviso that the money re-

ceived from the sale thereof would be held in trust for the benefit of the Indians.

In 1905 President Theodore Roosevelt, by proclamation dated July 14, placed the land of the Indian reservation not theretofore allotted to Indians back on the public domain.[1] Congress appropriated funds to pay for the land thus transferred, and the Indians accepted the money.[2]

Some 25 years ago, the Ute Indians got a judgment against the United States government for the money which it had received from the sale of the reservation land lying in the State of Colorado.[3] That judgment totaled $31,938,473.43. The basis of their suit against the government was that they had an interest in the land in the nature of a lien to secure the payment to the Ute tribes of the money received by the government for the land which had been taken back into the public domain and sold to the public. By this judgment, and the satisfaction thereof, the Indians lost all rights which they or their ancestors ever had in or to the land not theretofore allocated to them. No longer can an Indian migrant carry about him a protecting mantle which makes him immune to the law of the land so long as he does not stray beyond the snowcapped moun-

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[1] 34 Statutes at Large, 3119 (1905).

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[2] 32 Statutes at Large, 264.

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[3] The Confederated Bands of Ute Indians v. The United States, 120 Ct. Clms., 609 (1951). See also 100 Ct. Clms. 413 (1943); 112 Ct. Clms, 123 (1948).

taiins to the north and south of the Duchesne drainage basin.

A treaty can only exist between independent, sovereign powers.[4] Several generations ago the United States government entered into a so-called treaty of peace with the nation of Ute Indians. The United States Supreme Court in DeCoteau v. District County Court[5] said that since that time, the government "has altered its general policy toward the Indian tribes". Further, the court stated: "After 1871, the tribes were no longer regarded as sovereign nations, and the government began to regulate their affairs through statute or through contractual agreements ratified by statute."[6]

The Ute nation, of the long-ago treaty, no longer exists, and the descendants of the inhabitants of that nation are now citizens of the United States. When a nation ceases to exist, its treaties are no longer of any force or effect,[7] and the descendants of those who constituted the erstwhile nation cannot thereafter claim any benefits under the treaty. For a long time, Indians have claimed that they were not treated as citizens of this country. Now that they are citizens of the United States, some of them are unwilling to accept the re-

[4] 87 C.J.S. § 1 Treaties).

[5] 420 U.S. 425, 43 L.Ed.2d 300, 95 S. Ct. 1082; 211 N.W.2d 843 (So. Dak. 1973).

[6] Id

[7] 74 Am. Jur. 2d § 12 (Treaties).

sponsibilities and duties which go with the privilege of citizenship.

In the case of DeCoteau v. District Court, supra, the question was presented as to whether or not the state court had jurisdiction of Indians within the confines of an original grant to the Indian tribe. There, as in the instant matter, the government had reduced the original reservation by the land not allocated to the Indians and had paid the tribe therefor. The South Dakota Supreme Court held that the land, within the boundaries of the original treaty, which had been purchased by the government and subsequently sold to white men, as was done in this case, was no longer "Indian Country" and that the state courts had jurisdiction over Indians therein. This ruling was affirmed by the Supreme Court of the United States in March, 1975.[8]

To declare the law to be as claimed by the appellant would be to abandon all forms of due process and permit an enrolled Indian to commit crimes or torts at will and be immune from an accountability to the law of the land. Any statute or court decision which would prevent an enrolled Indian from being tried under the law of the land for a tort or crime committed by that Indian would be in contravention of the due process clause of the Constitution.

To permit an Indian who commits a murder in any of the various towns in the drainage area of the Duchesne River to show disdain for the prosecuting offic-

[8] 420 U.S. 425.

ials and claim the sanctuary of the tribal method of procedure is unthinkable.

The judgment of the trial court was correct and it is affirmed. Costs are awarded to the respondent.

I Concur:

J. Allan Crockett, Justice

HENRIOD, Justice, concurs in the result.

TUCKETT, Justice: (Dissenting)

I respectfully dissent.

An affidavit of the superintendent of the Uintah and Ouray Agency of the Bureau of Indian Affairs, Fort Duchesne, discloses that the place where the accident occurred was located entirely within the exterior boundaries of the Uintah and Ouray Reservation. The affidavit further discloses that the Ute Indian Tribe is a federally recognized tribe exercising the powers of government within the boundaries of the reservation. A tribal court has been established by the Ute Indian Tribe which has jurisdiction over all civil cases involving enrolled members of the tribe. The sole question presnted on appeal is whether or not the District Court of Uintah County had jurisdiction to entertain and to determine the controversy which arose on the tribal reservation and in which an enrolled Indian of the Ute Tribe was a party defendant.

Under federal statutes "Indian country" is defined as follows:

> . . . the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities with the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

While 18 U.S.C., Sec. 1151, above quoted, on its face only deals with criminal jurisdiction it has been recognized that it generally applies as well to questions of civil jurisdiction.[1] Title 25, Sec. 1322, is a grant of power by Congress to the states pertaining to jurisdiction by the states over civil causes in which Indians are parties. That section is in the following language:

> The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such

[1] De Coteau v. District County Court 420 U.S. 425, 95 S. Ct. 1082, 43 L.Ed. 2d 300; McClanahan v. Arizona Tax Com. 411 U.S. 164, 36 L.Ed. 129, 93 S.Ct. 1257; U.S. v. Celestine 215 U.S. 278.

> civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Section 1326, Title 25, deals with the process by which the State may acquire jurisdiction. That section is in the following language:

> State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other government body, or by 20 per centum of such enrolled adults.

Pursuant to the acts of Congress above set forth, in 1971 the Utah Legislature adopted two statutes pertaining to the subject. Section 63-36-9, U.C.A. 1953, as amended, provides as follows:

> The state of Utah hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, country and lands or any portion thereof within this state in accordance with the consent of the United States

> given by the act of April 11, 1968. . . .

Section 63-36-10, which is also pertinent here, is in the following language:

> State jurisdiction acquired or retroceded pursuant to this act with respect to criminal offenses or civil causes of action shall be applicable in Indian country only where the enrolled Indians residing within the affected area of such Indian country accept state jurisdiction or request its retrocession by a majority vote of the adult Indians voting at a special election held for that purpose. All special elections shall be called pursuant to federal law.[2]

The Ute Indian Tribe of the Uintah and Ouray reservation have not accepted state jurisdiction by a majority vote of the adult enrolled Indians residing within the reservation. The Indian reservation having been established by Congress, only the Congress could terminate the reservation or change its status.

The definition of "Indian reservation" as defined by Section 63-36-18, U.C.A. 1953, as amended, indi-

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[2] Art. III, Constitution of Utah provides: "Second:-The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. . . ."

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[3] Gourneau v. Smith (N.D.) 207 N.W.2d 256; Kennerly v. Dist. Court of Ninth Jud. Dist. of Montana 400 U.S. 423, 27 L.Ed.2d 507, 91 S. Ct. 480.

cates that rights of way running through the reservation are part of the reservation.[3]

I am of the opinion that the district court was without jurisdiction.

MAUGHAN, Justice, concurs in the views expressed in the dissenting opinion of Mr. Justice Tuckett.

APPENDIX B

SUPREME COURT OF UTAH

STATE OF UTAH
Salt Lake City, Utah
September 20, 1976

Office of the Clerk

Boyden, Kennedy, Romney & Howard
Attorneys at Law

1000 Kennecott Building
Salt Lake City, Utah 84133

Attention: Scott C. Pugsley, Esq.

Myron Brough,

Plaintiff and Respondent,

v.

Ramon R. Appyawora,

Defendant and Appellant.

No. 14434

This day petition for rehearing denied. Case remitted to Uintah County.

Allan E. Mecham, Clerk

APPENDIX C

IN THE DISTRICT COURT OF
UINTAH COUNTY

STATE OF UTAH

MYRON BROUGH, *Plaintiff,* v. RAMON R. APPAWORA, *Defendant.*	ORDER Civil No. 7648

The above-entitled case came on for hearing on the motion of the Ute Indian Tribe to set aside the default judgment against defendant and to dismiss plaintiff's cause of action on the grounds of lack of jurisdiction over the defendant and over the subject matter, the Court having heard argument of counsel and being fully appraised in the premises,

NOW, THEREFORE, IT IS ORDERED that the motions on file herein to vacate the judgment are herewith denied.

DATED this 12th day of December, 1975.

BY THE COURT:

Allen B. Sorensen
District Judge

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Order was mailed, postage prepaid, to Mr. Scott C. Pugsley, Attorney for Defendant, 1000 Kennecott Building, 10 East South Temple, Salt Lake City, Utah 84133, this 12th day of December, 1975.

/s /Robert M. McRae

APPENDIX D

CONSTITUTIONAL PROVISIONS

The Commerce Clause (Art. I, Sec 8,. cl. 3):

"The Congress shall have Power . . . to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

The Due Process Clause (Amend. XIV, § 1):

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

APPENDIX E

25 U.S.C. §§1321-1326 (82 Stat. 78-80).

SUBCHAPTER III.—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

25 U.S.C. § 1321. Assumption by State of criminal jurisdiction—Consent of United States; force and effect of criminal laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or an part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal law of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or per-

sonal property, including water rights, belonging to any Indian or any Indian tribe, band, or communty that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

25 U.S.C. § 1322. Assumption by State of civil jurisdiction—Consent of United States; force and effect of civil laws

a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Alienation, encumbrance, taxation, use, and probate of property

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or its subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or satute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

Force and effect of tribal ordinances or customs

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

25 U.S.C. § 1323. Retrocession of jurisdiction by State

(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such

State pursuant to the provisions of section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 587), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

25 U.S.C. § 1324. Amendment of State constitutions or statutes to remove legal impediment; effective date

Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this subchapter. The provisions of this subchapter shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

25 U.S.C. § 1325. Abatement of actions

(a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this subchapter shall abate by reason of that

cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this subchapter shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession. If the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

25 U.S.C. § 1326. Special election

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

APPENDIX F

25 U.S.C. §§ 677-677aa (68 Stat. 868 et seq)

UTE INDIANS OF UTAH: DISTRIBUTION OF ASSETS BETWEEN MIXED-BLOOD MEMBERS; TERMNATION OF FEDERAL SUPERVISION OVER PROPERTY OF MIXED-BLOOD MEMBERS

25 U.S.C. § 677 Purpose

The purpose of sections 677-677aa of this title is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

[25 U.S.C. §§ 677a to 677aa omitted]

APPENDIX G

Act of March 11, 1938 (62 Stat. 72.)

AN ACT

To define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the exterior boundary of the Uintah and Ouray Reservation in Grand and Uintah Counties, in the State of Utah, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation, is hereby extended to include the following area: [legal description omitted]

Sec. 2. The Secretary of the Interior is hereby authorized and directed to revoke the order dated September 26, 1933, temporarily withdrawing in aid of legislation certain lands in the former Uncompahgre Indian Reservation.

Sec. 3. The State of Utah may relinquish to the United States for the benefit of the Indians of the said Ute Reservation such tracts of school or other State-owned lands, surveyed or unsurveyed, within the said reserved area, as it may see fit, reserving to said State, if it so desires, such rights as it may possess to any minerals underlying such State lands as may be relinquished

and said State shall have the right to make selections in lieu thereof outside of the area hereby withdrawn, equal in value, as determined by the Secretary of the Interior, to the lands relinquish, from the vacant, unappropriated, nonmineral public lands, within the State of Utah, such lieu selections to be made in the manner provided in the enabling Act pertaining to said State, except as to the payment of fees or commissions, which are hereby waived. The value of improvements owned by the State on lands relinquished to the United States for the benefit of said Indians shall be taken into consideration and full credit in the form of lands shall be allowed therefor. Any funds now or hereafter on deposit in the United States Treasury to the credit of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, are hereby made available, and with the consent of the Uintah and Ouray Tribal Business Committee, may be expended for the purchase of privately owned and State-owned lands, including the improvements thereon, and improvements heretofore placed on public lands, together with water rights and water holes, within said boundary. The title to lands purchased under this authorization may, in the discretion of the Secretary of the Interior, be taken for the surface only. Title to any lands and rights acquired hereunder shall be taken in the name of the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and such lands or rights shall be exempt from State or local taxation.

Sec. 4 In any suit now pending or hereafter brought against the United States by the Ute Indian

Tribe of the Uintah and Ouray Reservation, or by any one or more of the separate bands comprising said Ute Indian Tribe of the Uintah and Ouray Reservation, in the Court of Claims, the Indian Claims Commission or before any other tribunal, the United States may claim, as an offset against any judgment recovered therein, the fair market value as of the date of this Act of any interest in public lands conveyed by section 1 hereof, and any improvements thereon, and the fair market value as of the date of the transfer of title of the lands and improvements which may be relinquished by the State of Utah to the United States under section 3 of this Act. The validity and amount of any such claim shall be determined by the court, commission, or tribunal in conformity with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1049, 1050).

APPENDIX H

Sections 9-18, Title 63, Chapter 36, Utah Code Annotated, 1953.

§ 63-36-9. Assumption by state of criminal and civil jurisdiction over Indians and Indian territory.—The state of Utah hereby obligates and binds itself to assume criminal an dcivil jurisdiction over Indians and Indian territory, country and lands or any portion thereof with this state in accordance with the consent of the United States given by the act of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), to the extent authorized by the act and this act.

§ 63-36-10. Special elections on acceptance or retrocession of state jurisdiction.—State jurisdiction acquired or retroceded pursuant to this act with respect to criminal offenses or civil causes of action shall be applicable in Indian country only where the enrolled Indians residing within the affected area of such Indian country accept state jurisdiction or request its retrocession by a majority vote of the adult Indians voting at a special election held for that purpose. All special elections shall be called pursuant to federal law.

§ 63-36-11. Acceptance or rejection of cession of state jurisdiction—Proclamation by governor.—Whenever the governor receives a resolution signed by the majority of any tribe, tribal council or other governing body duly recognized by the Bureau of Indian Affairs

of any tribe, community, band or group in the state certifying the results of a special election expressly ceding criminal and/or civil jurisdiction of the Indian tribe, community, band or group or its lands or any portion thereof to the state of Utah within the limits authorized by federal law, he shall either accept or reject the cession of jurisdiction within sixty days. If the governor accepts jurisdiction, he shall issue a proclamation within sixty days to the effect that civil and/or criminal jurisdiction shall apply, subject to the limitations of this act, to all Indians and all Indian territory, county, lands or any portion thereof of the Indian body invoved to the extent authorized by the resolution. Failure to issue the proclamation within the time prescribed is deemed a rejection of the assumption of jurisdiction.

§ 63-36-12. Criminal jurisdiction.—The state of Utah shall assume jurisdiction over offenses as set forth in this act, committed by or against Indians in the lands described in each tribal resolution sixty days after issuance of the governor's proclamation to the same extent it has jurisdiction over offenses committed elsewhere within the state. The criminal laws of the state shall have the same force and effect within such lands as they have elsewhere within the state.

§ 63-36-13. Civil jurisdiction.—The state of Utah shall assume jurisdiction over civil causes of action as set forth in this act, between Indians or to which Indians are parties in the lands described in each tribal resolution sixty days after issuance of the governor's proclamation to the same extent it has jurisdiction over

civil causes of action as elsewhere within the state. The civil laws of the state shall have the same force and effect within such lands as they have elsewhere within the state, except as otherwise provided by this act.

§ 63-36-14. State jurisdiction subject to provisions of federal law and resolution of tribe.—The jurisdiction assumed pursuant to this act is subject to the limitations and provisions of the federal act of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), and the specific limitations set forth in each resolution ceding jurisdiction to the state, both as to geographical area and subject matter.

§ 63-36-15. Retrocession of state jurisdiction—Proclamation by governor.—The state of Utah hereby obligates and binds itself to retrocede all or any measure of the criminal or civil jurisdiction acquired by it pursuant to this act whenever the governor receives a resolution from a majority of any tribe, tribal council or other governing body duly recognized by the Bureau of Indian Affairs of any Indian tribe, community, band or group in this state, certifying the results of a special election and expressly requesting the state to retrocede jurisdiction over its people or lands or any portion thereof within the limits authorized by the act of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress). The governor shall issue within sixty days a proclamation to the effect that jurisdiction has been retroceded for all such Indians and all Indian territory, country, lands or any portion thereof.

§ 63-36-16. Limitations on state authority with

respect to property and rights of Indians.—Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall enlarge, diminish or deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute or executive order with respect to Indian land grants, hunting, trapping or fishing or the control, licensing or regulation thereof.

§ 63-36-17. Tribal ordinance or custom given full force and effect.—Any tribal ordinance or custom adopted by an Indian tribe, band or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action.

§ 63-36-18. Criminal jurisdiction of state over hunting, trapping, or fishing offenses on reservations—"Indian reservation" defined.—"Indian reservation" as used in this act means (a) all land within the limits of

any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation, (b) all Indian allotments, to which the Indian titles have not been extinguished, including rights of way, thereon.

APPENDIX I

Act of May 27, 1902 (32 Stat. 245, 263-4).

An Act Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ...

That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nineteen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain: *Provided*, That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: *And provided further*, That nothing herein contained shall impair the rghts of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the

Secretary of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the mining laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Company, which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians. And the sum of seventy thousand and sixty-four dollars and forty-eight cents is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid to the Uintah and the White River tribes of Ute Indians, under the direction of the Secretary of the Interior, whenever a majority of the adult male Indians of said tribes shall have consented to the allotment of lands and the restoration of the unallotted lands within said reservation as herein provided.

Said item of seventy thousand and sixty-four dollars and forty-eight cents to be paid to the Uintah and White River Utes covers claims which these Indians have

made on account of the allotment of lands on the Uintah Reservation to Uncompahgre Indians and for which the Government has received from said Uncompahgre Indians money aggregating sixty thousand and sixty-four dollars and forty-eight cents; and the remaining ten thousand dollars claimed by the Indians under an Act of Congress detaching a small part of the reservation on the east and under which Act the proceeds of the sale of the lands were to be applied for the benefit of the Indians.

. . . .

APPENDIX J

Presidential Proclamation of July 14, 1905 (34 Stat. 3119)

By The President of the United States of America
A PROCLAMATION

Whereas, it was provided by the Act of Congress, approved May 27, A.D., 1902 (32 Stat., 263), among other things, that on October first, 1903, the unallotted lands in the Uintah Indian Reservation, in the State of Utah, "shall be restored to the public domain: Provided, That persons entering any of said lands under the homestead laws shall pay therefor at the rate of one dollar and twenty-five cents per acre".

And, whereas, the time for the opening of said unallotted lands was extended to October 1, 1904, by the Act of Congress approved March 3, 1903 (32 Stat., 998), and was extended to March 10, 1905, by the Act of Congress approved Apri 21, 1904 (33 Stat., 207), and was again extended to not later than September 1, 1905, by the Act of Congress, approved March 3, 1905 (33 Stat., 1069), which last named act provided, among other things:

That the said unallotted lands, excepting such tracts as may have been set aside as national forest reserve, and such mineral lands as were disposed of by the Act of Congress of May twenty-seventh, nineteen hundred

and two, shall be disposed of under the general provisions of the homestead and townsite laws of the United Staes, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescrbe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof: and no person shall be permitted to settle upon, occupy or enter any of said lands, except as prescribed in said proclamation, until after the expiration of sixty days from the time when the same are thereby opened to settlement and entry: Provided. That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish war of Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by said Acts of Congress, do hereby declare and make known that all the unallotted lands in said reservation, excepting such as have at that time been reserved for military, forestry and other purposes, and such mineral lands as may have been disposed of under existing laws, will on and after the 28th day of August, 1905, in the manner hereinafter prescribed, and not otherwise, be opened to entry, settlement and disposition under the general provisions of the homestead and townsite laws of the United States: and it is further directed and prescribed that:

Commencing at 9 o'clock a.m. Tuesday, August 1, 1905, and endng at 6 o'clock p.m. Saturday, August 12, 1905, a registration will be had at Vernal, Price and Provo, State of Utah, and at Grand Junction, State of Colorado, for the purpose of ascertaining what persons desire to enter, settle upon, and acquire title to any of said lands under the homestead law, and of ascertaining their qualifications so to do. To obtain registration each applicant will be required to show himself duly qualified, by written application to be made only on a blank form provided by the Commissioner of the General Land Office, to make homestead entry of these lands under existing laws, and to give the registering officer such appropriate matters of description and identity as will protect the applicant and the Government against any attempted impersonation. Registration cannot be effected through the use of the mails or the employment of an agent, excepting that honorably discharged soldiers and sailors entitled to the benefits of section 2304 of the Revised Statutes of the United States, as amended by the act of Congress, approved March 1, 1901 (31 Stat., 847), may present their applications for registration and due proofs of their qualifications through an agent of their own selection, having a duly executed power of attorney on a blank form provided by the Commissioner of the General Land Office, but no person will be permitted to act as agent for more than one such solder or sailor. No person will be permitted to register more than once or in any other than his true name.

Each applicant who shows himself duly qualified will be registered and given a nontransferable certificate

to that effect, which will entitle him to go upon and examine the lands to be opened hereunder; but the only purpose for which he can go upon and examine said lands is that of enabling him later on, as herein provided, to understandingly select the lands for which he may make entry. No one will be permitted to make settlement upon any of said lands in advance of the opening herein provided for, and during the first sixty days following said opening no one but registered applicants will be permitted to make homestead settlement upon any of said lands and then only in pursuance of a homestead entry duly allowed by the local land officers, or of a soldier's declaratory statement duly accepted by such officers.

The order in which, during the first sixty days following the opening, the registered applicants will be permitted to make homestead entry of the lands opened hereunder, will be determined by a drawing for the district publicly held at Provo, Utah, commencing at 9 o'clock a.m., Thursday, August 17, 1905, and continuing for such period as may be necessary to complete the same. The drawing will be had under the supervision and immediate observance of a committee of three persons whose integrity is such as to make their control of the drawing a guaranty of its fairness. The members of this committee will be appointed by the Secretary of the Interior, who will prescribe suitable compensation for their services. Preparatory to this drawing the registration officers will, at the time of registering each applicant who shows himself duly qualified, make out a card, which must be signed by the applicant, and giving

such a description of the applicant as will enable the local land officers to thereafter identify him. This card will be subsequently sealed in a separate envelope which will bear no other distinguishing label or mark than such as may be necessary to show that it is to go into the drawing. These envelopes will be carefully preserved and remain sealed until opened in the course of the drawing herein provided. When the registration is completed, all of these sealed envelopes will be brought together at the place of drawing and turned over to the committee in charge of the drawing, who, in such manner as in their judgment will be attended with entire fairness and equality of opportunity, shall proceed to draw out and open the separate envelopes and to give to each inclosed card a number in the order in which the envelope containing the same is drawn. The result of the drawing will be certified by the committee to the officers of the district and will determine the order in which the applicants may make homestead entry of said lands and settlement thereon.

Notice of the drawings, stating the name of each applicant and number assigned to him by the drawing, will be posted each day at the place of drawing, and each applicant will be notified of his number, and of the day upon which he must make his entry, by a postal card mailed to him at the address given by him at the time of registration. The result of each day's drawing will also be given to the press to be published as a matter of news. Applications for homestead entry of said lands during the first sixty days following the opening can be made only by registered applicants and

in the order established by the drawing.

Commencing on Monday, August 28, 1905, at 9 o'clock a.m., the applications of those drawing numbers 1 to 50, inclusive, must be presented at the land office in the town of Vernal, Utah, in the land district in which said lands are situated, and will be considered in their numerical order during the first day, and the applications of those drawing numbers 51 to 100, inclusive, must be presented and will be considered in their numerical order during the second day, and so on at that rate until all of said lands subject to entry under the homestead law, and desired thereunder, have been entered. If any applicant fails to appear and present his application for entry when the number assigned to him by the drawing is reached, his right to enter will be passed until after the other applications assigned for that day have been disposed of, when he will be given another opportunity to make entry, failing in which he will be deemed to have abandoned his right to make entry under such drawing.

To obtain the allowance of a homestead entry, each applicant must personally present the certificate of registration theretofore issued to him, together with a regular homestead application and the necessary accompanying proofs, together with the regular land office fees, but an honorary discharged soldier or sailor may file his declaratory statement through his agent, who can represent but one soldier or sailor as in the matter of registration.

Persons who make homestead entry for any of

these lands will be required to pay therefor at the rate of one dollar and twenty-five cents per acre when they make final proof, but no payment, other than the usual fees and commissions will be required at the time the entry is made.

Persons who apply to make entry of these lands prior to October 27, 1905, will not be required to file the usual nonmineral affidavit with their applications to enter, but such affidavit must be filed before final proof is accepted under their entries; but all persons who make entry after that date will be required to file that affidavit with their applications to enter.

The production of the certificate of registration will be dispensed with only upon satisfactory proof of its loss or destruction. If at the time of considering his regular application for entry it appear that an applicant is disqualified from making homestead entry of these lands, his application will be rejected, notwithstanding his prior registration. If any applicant shall register more than once hereunder, or in any other than his true name, or shall transfer his registration certificate, he will thereby lose all the benefits of the registration and drawing herein provided for, and will be precluded from entering or settling upon any of said lands during the first sixty days following said opening.

Any person or persons desiring to found, or to suggest establishing, a townsite upon any of the said lands, at any point, may, at any time before the opening herein provided for, file in the land office a written applica-

tion to that effect, describing by legal subdivisions the lands intended to be affected, and stating fully and under oath the necessity or propriety of founding or establishing a town at that place. The local officers will forthwith transmit said petition to the Commissioner of the General Land Office with their recommendation in the premises. Such Commissioner, if he believes the public interests will be subserved thereby, will, if the Secretary of the Interior approve thereof, issue an order withdrawing the lands described in such petition, or any portion thereof, from homestead entry and settlement and directing that the same be held for the time being for disposal under the townsite laws of the United States in such manner as the Secretary of the Interior may from time to time direct; and, if at any time after such withdrawal has been made it is determined that the lands so withdrawn are not needed for townsite purposes they may be released from such withdrawal and then disposed of under the general provisions of the homestead laws in the manner prescribed herein.

All persons are especially admonished that under the said act of Congress approved March 3, 1905, it is provided that no person shall be permitted to settle upon, occupy, or enter any of said lands except in the manner prescribed in this proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry. After the expiration of the said period of sixty days, but not before, as hereinbefore prescribed, any of said lands remaining undisposed of may be settled upon, occupied, and entered under the general provisions of the homestead

and townsite laws of the United States in like manner as if the manner of effecting such settlement, occupancy, and entry had not been prescribed herein in obedience to law.

The Secretary of the Interior shall prescribe all needful rules and regulations necessary to carry into full effect the opening herein provided for.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 14th July, in the year of our Lord 1905, and of the Independence of the United States the one hundred and thirtieth.

[Seal.]

Theodore Roosevelt

By the President:

Alvey A. Adee
Acting Secretary of State

APPENDIX K

FILED
DISTRICT COURT
UINTAH COUNTY, UTAH
October 13, 1976
MORRIS R. COOK, CLERK
By Roena Licht, Deputy

IN THE FOURTH JUDICIAL DISTRICT
COURT OF UINTAH COUNTY
STATE OF UTAH

MYRON BROUGH, *Plaintiff and Appellee,* v. RAMON R. APPAWORA, *Defendant and Appellant.*	Civil No. 7648

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Ramon R. Appawora, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Utah State Supreme Court, affirming the Order of this Court denying Defendant's Motion to Set Aside Default and Default Judgment and to Dismiss, filed by the Utah Supreme Court on August 17, 1976, with a Petition for Rehearing denied by the Utah Supreme Court on September 20, 1976.

28 U.S.C. Section 2403 may be applicable to this appeal.

This appeal is taken pursuant to 28 U.S.C. Section 1257(1).

Dated: October 12, 1976.

Stephen G. Boyden

F. Burton Howard

Scott C. Pugsley
BOYDEN, KENNEDY,
ROMNEY & HOWARD
Attorneys for Appellant
1000 Kennecott Building
Salt Lake City, Utah 84133

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the foregoing Notice of Appeal to the Supreme Court of the United States to Robert M. McRae, Attorney for Appellee Myron Brough, 370 East Fifth South, Salt Lake City, Utah 84111, and to the Solicitor General, Department of Justice, Washington, D.C. 20530, by first class mail, postage prepaid this 12th day of October, 1976.

/s/ Scott C. Pugsley